

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

| | | |
|----------------------------------|---|-----------------------|
| INSITUFORM TECHNOLOGIES, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 04 10487 GAO |
| |) | |
| AMERICAN HOME ASSURANCE COMPANY, |) | |
| |) | |
| Defendant. |) | |

AFFIDAVIT OF ROBERT L. KELLEY

I, ROBERT L. KELLEY, am of counsel in the general counsel's office of Insituform Technologies, Inc. ("Insituform"). The following is based on personal knowledge or my investigation and is true and correct to the best of my understanding.

1. Insituform was a subcontractor of D'Allessandro Corporation ("D'Allessandro") to perform work under Massachusetts Water Resources Authority ("MWRA") contract #6840, East Boston Sewer Rehabilitation.
2. The contract between Insituform and D'Allessandro incorporates all of the General Conditions of the Contract between D'Allessandro and the MWRA.
3. The contract between D'Allessandro and the MWRA and the contract between D'Allessandro and Insituform is approximately one thousand pages. True and correct portions of those contracts are attached hereto as Exhibit A and referenced below.

4. Under the General Conditions of the contract between D'Allessandro and the MWRA, ¶¶ 3.4.1 – 3.4.10, the contractor was required to build in accordance with the contract documents.

5. Under the General Conditions of the contract between D'Allessandro and the MWRA, ¶ 14.2.1, the contractor was required to correct all work rejected by the MWRA as defective or as failing to conform with the contract documents.

6. Insituform incurred liability under its contract with D'Allessandro and the incorporated terms of D'Allessandro's contract with the MWRA when it had to perform corrective work on the East Boston Basin Sewer Project that was rejected by the MWRA for failure to comply with the contract documents.

FURTHER AFFIANT SAYETH NAUGHT.

By:

ROBERT L. KELLEY

SIGNED AND SWORN to before
me this 8th day of July, 2004

Notary Public

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